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IN THE

Supreme Court of the United States

Supreme Court, U. S.
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October Term, 1971
No. 817

JUAN JORGE GARCIA CARDENAS,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District

BRIEF OF RESPONDENT IN OPPOSITION

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BRIEF OF RESPONDENT IN OPPOSITION

Opinions Below

On July 28, 1971, the California Court of Appeal, Second Appellate District, Division Three, rendered an unpublished opinion affirming the guilt of petitioner of five counts of unlawfully discharging explosives in violation of California Penal Code section 375(4); five counts of possession of destructive devices in violation of California Penal Code section 12303 and five counts of malicious use of explosives in violation of section 12354 of the California Health and Safety Code. Said opinion is attached as Appendix.

On August 17, 1971, a petition for hearing was denied by the Court of Appeal and on September 22, 1971, a hearing was denied by the California Supreme Court, both without opinion.

Jurisdictional Statement

Petitioner invokes jurisdiction of this Honorable Court under Title 28, United States Code section 1257-(3). (Petn. p. 2.)

Questions Presented

Petitioner raises the following questions:

1. Was certain "Florida evidence," held inadmissible by the Court of Appeal, harmless error?

2. Did the introduction of the said evidence deny petitioner due process and a fair trial?

3. Was the Federal Arrest Warrant defective?

4. Were statements made by petitioner to Officer Cline on the airplane from Miami to Los Angeles tainted by an unlawful arrest and a defective admonition of rights?

5. Was the evidence insufficient to sustain the conviction?

Statement of the Case

The Statement of the Case as set out by the Court of Appeal on pages 2 and 3 of the opinion is set out herein:

> "Defendant and codefendant Cornillot were jointly indicted on fifteen felony counts in connection with bombings on July 19, 1968 of five separate buildings and offices in Los Angeles and Beverly Hills. Cornillot was not tried with defendant.[1] Counts 1, 4, 7, 10 and 13 charged de-

[1]"The Clerk's transcript prepared in conjunction with Cardenas; appeal does not contain copies of all the counts of which he was found guilty; some of the counts were amended and do not correspond to the counts as stated in the judgment. We have

fendant with unlawfully discharging explosives (Pen. Code, § 375(4)); counts 2, 5, 8, 11 and 14 with possession of destructive devices (Pen. Code, § 12303); and counts 3, 6, 9, 12 and 15 with malicious use of explosives (Health & Saf. Code, § 12354). Defendant pleaded not guilty. Motions under sections 995 and 1538.5, Penal Code, and a motion to suppress Exhibits 80, 81 and 82 were denied.

"After jury trial defendant was found guilty on all counts; his motion for new trial and application for probation were denied. The court, on its own motion arrested judgment on the counts of malicious use of explosives (counts 3, 6, 9, 12 and 15), and defendant was 'discharged from further disabilities on those counts.' He was sentenced to state prison for the term prescribed by law on the five bombing and the five possession counts, the sentence on the bombing of the Shell Data Processing Center (count 4) to run consecutively to the sentence on the bombing of the Mexican National Tourist Council (count 1), and the sentences on the other three bombing counts (counts 7, 10 and 13) to run concurrently with that on count 1; execution of sentences was stayed on the possession counts (counts 2, 5, 8, 11 and 14) until the judgment becomes final on the bombing counts, at which time the stay was to become permanent. Defendant appeals from the judgment of convic-

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augmented the record to include the Superior Court file (Cal. Rules of Court, rule 12a) and find that the indictment set forth in defendant's record on appeal in fact applies to Cornillot. We perceive no purpose in having the clerk's transcript corrected since the reporter's transcript at pages 17 through 32 states the full text of all the counts charged against Cardenas and of which he was found guilty; the judgment conforms thereto."

tion and the order denying probation; the appeal from the order will be dismissed. (Pen. Code, § 1237; People v. Jackson, 230 Cal. App. 2d 485, 489.)"

Statement of Facts

The Statement of Facts is adopted from that of pages 3-9 of the Opinion of the Court of Appeal:

"On April 5, 1968 defendant and codefendant Cornillot were arrested in Miami, Florida, for disturbing the peace. Defendant's car was driven to the police station, impounded, searched, and the contents thereof inventoried. The charges against the two men were subsequently dismissed. Defendant's automobile was returned to him. At the time he was unaware that the police had retained possession of some of the contents of his car.

"Shortly after midnight on July 19, 1968, five buildings in Los Angeles and Beverly Hills were bombed: the Mexican National Tourist Council (count 1 in Beverly Hills; the Shell Data Processing Center (count 2), approximately 50 yards distant from the tourist agency; the Air France office (count 7) in downtown Los Angeles; the Japan Air Lines office (count 10) approximately a block and a half west of Air France; and the Government of Mexico Tourist Department (count 13), midway between Los Angeles and Beverly Hills. Stickers with the words "Unete Poder Cubano" (United Cuban Power) were found at the bombed buildings: at the Mexican Tourist Council (Exhibit 66), at the Air France office (Exhibit 64 and Exhibit 67), and at the Shell Center (Exhibit 65).

"It was stipulated at trial 'that the stickers . . . marked . . . 64, 65, 66 and 67 were ordered from [Colby Poster Printing Company in Los Angeles] on May 25, 1968 by Pedro . . . Arnau. . . .; that the stickers were ordered in the quantity of 1,000, and that the stickers were picked up on June 26, 1968, by Pedro Arnau and Juan Garcia-Cardenas, the defendant. . . .'"

"A Mrs. Bustamente testified that prior to June or July 1968 she had observed defendant and codefendant Cornillot on numerous occasions carrying cardboard boxes into one Adolfo Padron's apartment and saw stickers on the boxes reading 'Cuban Power.'

"A fingerprint expert testified that he found Cornillot's fingerprints on a sticker at the Mexican National Tourist Council office (Exhibit 66), and defendant's fingerprints on a sticker at the Air France office (Exhibit 67).

"A criminologist assigned to the Scientific Investigation Division, Los Angeles Police Department, investigated the various bombed locations. He testified that analysis of the debris found at each location indicated that homemade bombs from a common source had been used; that he found fragmentary evidence of red, white and blue material with foreign language thereon which had been wrapped around cardboard boxes in which the bombs had been placed and wrapped with a type of masking tape; that the bombs had been constructed with flat powder fuses containing red thread; that the main charge had been dynamite; and that the bombs had been placed in mail boxes or positioned near doors.

"On October 28, 1968, upon receipt of information via radio that a fugitive warrant had been issued in Los Angeles for the arrest of defendant, FBI agents arrested defendant in Miami. Without his consent they searched his apartment and found red, white and blue stickers with the words 'Poder Cubano' and the printed name 'Jose Marti' (Exhibit 85), a three-page handwritten document entitled 'Poder Cubano Unido, Celula, Espontanea #1 GTC' (Exhibit 86[2]), two receipts for donations (Exhibit 87), a three-page typed document entitled 'Poder Cubano Tribuno Del Partido Revolucionario de Cubano' (Exhibit 88), a document entitled 'Boletin de Guerre' (War Bulletin) (Exhibit 89[3]), and a document entitled

[2]"Exhibit 86 reads in pertinent part as follows:

" 'United Cuban Power.

" 'Spontaneous Cell #1 G.T.C.

" . . .

" 'Through this medium we inform the exiles in general, that all secret spontaneous cells that operate in different cities of the U.S. close ranks . . . not to criticize any medium used in the battle for the prompt overthrow of the existing regime in Cuba. .

" '. . . The only thing that will carry us to victory will be the Cuban revolution. . . .

" 'For the liberty of Cuba we call the Cubans to incorporate in the battle—this is the time where we have to maintain high our combat flag at whatever price that may be necessary. . . .

" 'Every Cuban has the duty of trying by all means within his reach to cooperate in the liberation of our country.

" . . .

" 'And that's why we say that we will maintain our position in any place where we may be, attacking the enemies of our country that trade with the blood and sorrow of our Cuba. . . .

" 'If we want to criticize or judge, we should first fight to free our country. . . .' "

[3]"Exhibit 89 reads in part:

" 'We are responsible of the revolutionary punishment against the French offices, and we ask the French govern-

'Poder Cubano Celula #1, Gerardo Torres Contreras' (Exhibit 90[4]).

"On December 21, 1968 Sergeant Cline of the Los Angeles Police Department, who had gone to Mexico to transport defendant to Los Angeles, advised him of his constitutional rights. Within two hours thereafter, defendant and the officer engaged in a short conversation while airborne en route to Los Angeles. The officer asked defendant if he was aware that a Dr. Bosch had received five to ten years for terroristic activities; defendant replied: 'Yes. What do you think I'll get?' Defendant added: 'We are patriots and we believe in what we are doing. . . . We are fighting on a foreign soil just as you are in Vietnam.'

"Defendant testified that he was 31 years old, that he had been born in Cuba, and spoke and understood some English; that at the time of the bombings he was a member of a movement known as 'Poder Cubano' (Cuban Power), and assisted in the propagation of its principles by distributing pamphlets, literature and stickers; that he lived in Miami, where he operated a restaurant, and on occasions had gone to Los Angeles to visit rela-

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ment to break its treacherous commerce with the Castro communism.' "

[4]"Exhibit 90 reads in part:

" 'Cuban Power.

" 'Cell #1. Gerardo Torres Contreras:

"

" 'Third: Encourage the militancy of those exiled for their participation of every type of struggle. . . .

"

" 'Ninth: Encourage actions in the world of the Cuban revolutionaries, to blockage commerce with tyranny. . . .

" 'Miami, September 24, 1968.

" 'Dr. Orlando Bosch, Political Delegate Cuban Power.' "

tives and to assist Los Angeles members of the Cuban movement; that he had assisted Pedro Arnau in picking up stickers at a Los Angeles printing plant; that he did not carry any boxes into Mr. Padron's apartment; that he had not met codefendant Cornillot in Los Angeles by prearrangement, but had seen him several times on the street during June 1968; that he was aware that Arnau and Padron were survivors of the Bay of Pigs incident and were members of 'Poder Cubano'; that he believed that the only way to overthrow Castro was by use of revolutionary means; that the inherent plan of 'Poder Cubano' to accomplish this result was to prevent foreign countries from trading with Cuba, thus bringing about Cuba's economic destruction, that he had written the full text of Exhibit 86 (see fn. 2, *ante*); that he was in Miami on the day of the bombings, having returned from Los Angeles by automobile during the latter part of June or early July 1968; and that he was not aware until his trial in Los Angeles that the Miami police had secretly retained articles taken from his car on the occasion of his April 1968 arrest on the charge of disturbing the peace."

Summary of Argument

This Court need not involve itself with the harmless error rule since the materials deemed inadmissible by the Court of Appeal are admissible under Federal standards. Thus evidence gleaned from the inventory of a car and a search of an apartment incident to an arrest for inter-state flight from prosecution are admissible under Federal constitutional standards. The affidavit for the arrest of petitioner was also proper and stated sources and reasons for the arrest.

If, for the sake of argument only, the fruits of the inventory of the vehicle and the search of the apartment were inadmissible, their admission was harmless beyond a reasonable doubt.

Petitioner's statements to Sergeant Cline on the airplane were not tainted by any illegality and the admonition of rights was proper.

Sufficiency of the evidence is not a Federal question, but the evidence was sufficient to sustain the conviction.

ARGUMENT

I

THE HARMLESS ERROR RULE IS INAPPLICABLE IN THAT EVIDENCE HELD INADMISSIBLE BY THE COURT OF APPEAL IS PROPERLY ADMISSIBLE UNDER FEDERAL STANDARDS

A. The Harmless Error Rule Is Inapplicable

Petitioner argues that although the Court of Appeal held that certain items found in an inventory of his car after his arrest for disturbing the peace in Miami, Florida, and a later search of his apartment pursuant to his arrest for flight to avoid prosecution in California were inadmissible, the court's holding that the admission of these items into evidence was harmless error, was erroneous. (Petn. p. 12.) It is submitted that the harmless error question need not be reached as the evidence in question was admissible under Federal standards.

1. The Evidence Found Pursuant to a Lawful Inventory of a Vehicle Is Admissible Under Federal Standards

The facts of the first Miami arrest on April 5, 1968, are set forth in the opinion of the Court of Appeal on pages 10-12 and is here set forth:

> "The facts surrounding that arrest are summarized: while eating at a drive-in, Officer Chacon of the Miami Police Department informed Officer Estafan that defendant and Cornillot were taking pictures of their police cars from across the street; after eating, Estafan continued on routine patrol in his car, while Chacon remained; sometime later Chacon radioed that he was stopping defendant's car and requested backup assistance from Estafan;

on arrival at the scene Estafan heard Cornillot and defendant speaking loudly to Chacon; as he walked by defendant's car he observed a camera and a tape recorder in the car; Cornillot grabbed the officer and attempted to get between him and the car, apparently to prevent the officer from looking inside; Cornillot yelled at the officer that he had no right to search or look into the auto; Cornillot was placed under arrest for disturbing the peace (Fla. Stats. Ann., § 877.03) and for drunkenness (Fla. Stats. Ann., § 856.01); defendant began to take Estafan's picture, yelling that he had his rights and that he was a 'Cuban Power'; defendant was then arrested for disturbing the peace.

"An arrest by a police officer without a warrant is justified in Florida when the offense is committed in the presence of the officer. (Fla. Stats. Ann., § 901.15.) In view of the conduct of defendant and his companion, we hold that the arrests were based on probable cause. (*People v. Ingle*, 53 Cal. 2d 407, 412-413.) The fact that the charges against defendant were subsequently dismissed has no bearing on the legality of his arrest. (*Coverstone v. Davies*, 38 Cal. 2d 315, 319; *Fraher v. Superior Court*, 272 Cal. App. 2d 155, 161; *Smith v. State* (Fla.) 155 So.2d 826.)

"Officer Estafan of the Miami Police Department testified that when an arrest is made of the sole occupant of a car in Florida, 'the car becomes the responsibility of our department. . . . I'm responsible for the valuables of the car and of the car. . . . I make out a pound [*sic*] slip and inventory . . . all the items of value in the

car.' This was a procedure apparently authorized by statute. (See Fla. Stats. Ann., § 186.59.)[1] At the scene the officer made a cursory examination of the car; he observed a gun and shells in the glove compartment and bundles of printed material in the trunk. On instructions from the Intelligence Unit of the Miami Police Department, the car was then taken to police headquarters where a formal impound and inventory were made. A search of the trunk uncovered 60 packages, each containing 1,000 pamphlets entitled 'Declaration of Principles of Cuban Power, Cell No. 1, Gerrardo Torres Contreras,' approximately 75 red, white and blue placards depicting a person designated as Joe Marti, and 75 red, white and blue bumper stickers with a picture of Jose Marti and the words 'Poder Cubano.' Specimens of each of the above were retained by the police when they returned the auto and its contents to defendant; the specimens were introduced into evidence, being designated as Exhibits 80, 81 and 82, respectively."

[1] "See also California Vehicle Code sections 22651 and 22850."

The Court of Appeal, while holding the arrest to be valid, held the fruits of the inventory to be invalid on the basis of a California state case, *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 703-12, 94 Cal. Rptr. 412. *Mozzetti* held that items found in an inventory of an automobile that are not in plain sight are inadmissible. However, it is submitted that the *Mozzetti* test is not the Federal standard. *United States v. Edwards*, 441 F. 2d 749, 754 (5th Cir. 1971); *United States v. Boyd*, 436 F. 2d 1203, 1205 (5th Cir. 1971); *United States v. Lipscomb*, 435 F. 2d 795, 800-01 (5th Cir.

1970), *cert. denied*, 401 U.S. 980; *United States v. Robbins*, 424 F. 2d 57, 59 (6th Cir. 1970); *Cotton v. United States*, 371 F. 2d 385, 392-93 (9th Cir. 1967). This Honorable Court in *Cooper v. California*, 386 U.S. 58, 60-62, 17 L. Ed. 2d 730, held that in automobile forfeiture cases, the police may look through a vehicle, including the glove compartment to see what items are present. As the court stated in *Lipscomb*, on page 800,

> ". . . An inventory is then necessary both to preserve the property of the accused while he is in jail and to forestall the possiblity that the accused may later claim that some item has not been returned to him."

Since it appears that the fruits of a lawful inventory of a vehicle of items not in plain sight are admissible under Federal standards, the evidence taken from the vehicle at the first Miami arrest should be admitted into evidence under those standards. The harmless error rule would not be applicable.[1]

2. The Evidence Found in Petitioner's Apartment and Petitioner's Statements to Officer Cline on the Airplane Were Admissible

The Court of Appeal held that the arrest warrant and the arrest of petitioner on October 28, 1968 by FBI agents were valid, but that the search thereto was invalid. The court also held that petitioner's statements

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[1]It should be noted that the Court of Appeal, citing *Miller v. State, Fla.*, 137 So. 2d 21, 26, argues that fruits of an inventory are not admissible in Florida. However, *Miller* stands for the proposition that a search obviously not an inventory cannot be sustained as an inventory. In *Miller*, the court held that looking under a car floor mat could not reasonably be deemed an inventory to pfotect anything of value in the car. Actually it appears that items not in plain sight found in lawful inventories of vehicles are admissible in Florida. *Gaskins v. State*, Fla., 89 So. 2d 867, 869-70.

to Officer Cline on the plane were admissible. Petitioner argues that the arrest warrant was invalid and that petitioner's statements to Officer Cline on the airplane were inadmissible due to defective admonitions of rights. (Petn. pp. 26, 38.) It is submitted that the arrest and arrest warrant was valid, that the search was proper under Federal standards and that the statements of petitioner to Officer Cline were properly admissible.

a. *The Arrest Warrant Was Proper*

The facts relating to the arrest warrant for petitioner's arrest on October 28, 1968; and the affidavit thereto are set forth by the court on pages 14 and 15 of the Opinion, as follows:

> ". . . It appears that the FBI and the local authorities had conducted a joint investigation of the case. The facts developed caused each agency to consider defendant and Cornillot as prime suspects. In October, approximately three months after the bombings, Special Agent McCarthy, in charge of the case for the FBI, learned that the two men were in Florida and was aware of the intention of the FBI to obtain unlawful flight complaints against each. At about the same time Sergeant Cline, Los Angeles Police Department, secured from the district attorney's office a complaint against each man and warrants for their arrest. On October 28 Special Agent Karis, FBI, pursuant to instructions from his supervisor, signed a federal complaint against each man stating in his affidavit that he had been 'informed through official channels by the Los Angeles Police Department that felony complaints against the above two suspects are outstanding in Los Angeles County'

> for the July 19, 1968 offenses; that 'on or about July 20, 1968' each man 'did move and travel in interstate commerce . . . with intent to avoid prosecution . . .' (18 U.S.C.A., § 1073); and that he had been 'informed through official channels by FBI Miami that FBI agents have observed the subjects in Miami within the last several days.' Federal warrants were issued and served on defendant and Cornillot on October 28."

Petitioner first argues that the affidavit is defective under *Whiteley v. Warden of Wyoming Penitentiary*, 401 U.S. 560. 28. L. 2d 306, 310, 311 and *Giordenello v. United States*, 357 U.S. 480, 486. 2 L. Ed. 2d 1503. (Petn. pp. 28-30.) However, in *Giordenello* and *Whiteley*, the affidavits contained only conclusory allegations that the suspect had committed a crime without any indication for the basis of the conclusion. In the affidavit in this case, the affiant related the source of his information and the facts he had learned therefrom. It was not conclusory as in the cases cited by petitioner, but instead was proper. See *Bowers v. Coiner*, 309 F. Supp. 1064, 1068. (U.S.D.C. S.D. West Virginia, 1970.)

Petitioner next contends that the affidavit is defective because the arrest was for flight to Miami to avoid prosecution in California in violation of 18 USC 1073, that 1073 was enacted to stop "roving criminals" and that he was not a "roving criminal" since he left California to go to Miami where he lived and voted. (Petn. pp. 30-31.) He also argues that the affidavit is defective in that the gravamen of 1073 is intent to avoid prosecution, which he argues is not adequately set forth in the affidavit. (Petn. pp. 30-31.) It is sub-

mitted that the affidavit was sufficient on its face and that the purpose of 1073 is consistent with the affidavit and the facts of the case. The purpose of 18 U.S.C. § 1073 is set forth in *United States v. Brandenburg*, 144 F. 2d 656, 659 (3rd Cir. 1944), and is as follows:

> "The purpose of the Fugitive Felon Act was stated by Congressman Sumners, Chairman of the Committee on the Judiciary of the House of Representatives, quoting the comments of the Attorney General of the United States on the bill as follows: 'One of the most difficult problems which local law-enforcement agencies have to deal with today is the ease with which criminals are able to flee from the State to avoid prosecution * * *. The above bill is considered the most satisfactory solution of this problem, which the States have never been able to solve effectively. This bill will not prevent the States from obtaining extradition of roving criminals, but the complicated process of extradition has proved to be very inefficient. The ability of Federal officers to follow a criminal from one State to any other State or States, as provided in the above bill, should furnish the desired relief from this class of law evaders. * * *' Report No. 1458 of the House Committee on the Judiciary, to accompany S. 2253, May 3, 1934, 73rd Congress, 2nd Session. The same report shows that the word 'burglary' and the other specific offenses named in the Act were substituted for the words 'a felony' used in the original bill. The general purpose of the Act was to assist in the enforcement of state laws. . . ."

The purpose of 1073 would therefore apply to petitioner, whether or not he lived in Miami. Whether or not the gravamen of 1073 is intent to avoid flight is irrelevant to the sufficiency of the affidavit, which indicated that felony complaints were issued against petitioner from Los Angeles County and that he was observed in Miami. For there to be probable cause in an affidavit, *prima facie* evidence of the crime need not be set out. *United States ex rel. Grano v. Anderson,* 318 F. Supp. 263, 266 (USDC, D. Delaware 1970); *Bowers v. Coiner,* 309 F. Supp. 1064, 1068. Therefore it is submitted that the affidavit to the arrest warrant was sufficient.

Petitioner also claims that the affidavit is defective because the affiant, Agent Karis stated in the above document that he was informed through official channels of the Los Angeles Police Department that felony complaints were outstanding against petitioner and Cornillot, when in fact he was so informed by official channels through his supervisor in the Federal Bureau of Investigation. [Petn. pp. 32-33; Rep. Tr. pp. 272-78.] Actually Agent Karis called his supervisor who told him that the information concerning the Los Angeles criminal complaint was true. [Rep. Tr. p. 272.] Therefore, Agent Karis did learn through official channels of the Los Angeles Police Department by means of his supervisor in the FBI that the felony complaint against petitioner existed in Los Angeles. The fact that is important is that Agent Karis received his information through official channels of a law enforcement agency so that the affidavit is true and not deficient.

In *McGrain v. Daugherty,* 273 U.S. 135, 156, 71 L. Ed. 580, this Honorable Court held a warrant for

attachment of a person ignoring a subpoena from a Senate committee, which is required to be under oath or affirmation, to be valid even though not sworn or affirmed thereto. Because it had the sanction of the oath of the members of the Senate. In the same manner, whether Agent Karis received his information through official channels personally by the Los Angeles Police Department or by means of another FBI agent would, it is submitted, be irrelevant and not really a misstatement.

Petitioner also argues that no complaint had been filed by the United States Attorney pursuant to section 1073 for at least two years in Southern California and that the charge against him was never prosecuted but was dismissed without further proceedings. (Petn. pp. 33-34.) However, as stated before, the purpose of 1073 is to aid local law enforcement agencies, which was accomplished by bringing petitioner back to Los Angeles for the purpose of trial. It is submitted that the relatively short absence of such complaints and the dismissal of these charges against petitioner do not show an absence of probable cause or any defect in the affidavit of the search warrant. Therefore, it is submitted that the search warrant was proper.

b. *The Search Pursuant to the Arrest for Flight to Avoid Prosecution Was Proper Under Federal Standards*

It is submitted that the search pursuant to the arrest warrant was proper and that the evidence gleaned thereby was properly admissible under Federal standards. The search took place on October 28, 1968, before this Court's decision in *Chimel v. California*, 395

U.S. 752, 23 L. Ed. 2d 685, so that that particular decision is inapplicable. *Williams v: United States,* 401 U.S. 646, 28 L.Ed. 2d 388. The Court of Appeal held that the search was invalid in that it was not related to the crime for which appellant was being arrested, namely, flight from prosecution from one state to another. The Court of Appeal based its decision upon the California case of *People v. Baca,* 254 Cal. App. 2d 428, 430, 62 Cal. Rptr. 182, which case invalidated a search based on an arrest on the basis of a bench warrant, since the finding of the suspect was sufficient evidence of the crime so that no further evidence was needed.

However; in the case at bar, the gravamen of the offense was flight from California to Florida to escape prosecution. Therefore, the authorities, upon arresting petitioner, were under a duty to seach for evidence, showing interstate flight and the means of interstate flight, such as airline tickets or other objects showing flight. *See United States v. Stern,* 225 F. Supp. 187, 190 (U.S.D.C., S.D. *New York,* 1964); *United States v. Lord,* 184 F. Supp. 923, 926 (U.S.D.C., S.D. New York, 1960). The authorities could also search for evidence relating to the crime for which he was charged in Los Angeles to show that he was hiding evidence and fearful of a strong case against him in California as motive for the flight. Therefore, it is submitted that the items found during the search were admissible into evidence under Federal standards.

c. *Statements Made by Appellant to Sergeant Cline on the Airplane from Florida to California Were Properly Admitted Into Evidence*

Petitioner argues that statements made by himself to Officer Cline should not have been admitted into evidence because they resulted from what he characterizes as an illegal arrest of October 28, 1968, by reason of the defects as he alleges exist in the affidavit to the search warrant. (Petn. p. 38.) However, it is submitted that the arrest was proper and the arrest warrant was proper as previously argued, so that the statements were properly introduced into evidence.[2]

Petitioner, without argument, states that the statements were inadmissible ". . . by reason of the lack of proper admonition of his rights under the Escobedo (Escobedo v. Illinois, 378 U.S. 478) and Miranda (Miranda v. Arizona, 384 U.S. 436) rules." (Petn. pp. 5, 38.)

However, the record shows that on December 21, 1968, Sergeant Cline advised petitioner of his constitutional rights pursuant to *Miranda* at the Dade County, Florida, jail which petitioner said that he understood. [Rep. Tr. pp. 333-35.] Petitioner appeared to be able to speak and understand English. [Rep. Tr. p. 334.] There was no interrogation at that time. The conversations in question were made within two hours of the time on the plane. [Rep. Tr. p. 335.] It is submitted

[2]It is submitted, however, that if for the sake of argument only the arrest was illegal, it did not taint the admission of these statements. Petitioner was arrested on October 28 and did not speak to Sergeant Cline until December 21. (Opinion pp. 5-6.)

that the fact that petitioner had been warned of his rights within two hours of making the statement, which he admitted he understood, would be sufficient admonition of rights. *See People v. Bynum*, 4 Cal. 3d 589, 600, 94 Cal. Rptr. 241; *People v. Hill*, 66 Cal. 2d 536, 544, 58 Cal. Rptr. 340, *cert. denied* 389 U.S. 993; *People v. Cooper*, 10 Cal. App. 3d 96, 107, 88 Cal. Rptr. 919; *People v. Brockman*, 2 Cal. App. 3d 1002, 1006, 83 Cal. Rptr. 70; *People v. Stewart*, 264 Cal. App. 2d 809, 815, 70 Cal. Rptr. 873.

Also it should be noted that petitioner's statements were not elicited by interrogation, but resulted from mere idle conversation. [Rep. Tr. p. 336.]

Therefore, petitioner was advised of his constitutional rights within two hours of the statements being made and these statements were not a product of interrogation, but rather that of idle conversation between the parties. It is submitted, therefore, that the statements were properly introduced into evidence.

B. If, for the Sake of Argument Only, the Evidence Gleaned From the Miami Inventory and Search Was Inadmissible, It Was Harmless Error

Petitioner argues that the Court in holding the evidence gleaned from the Miami inventory and search were inadmissible, improperly held it to be harmless error under *Chapman v. California*, 386 U.S. 18, 23, 17 L. Ed. 2d 705. (Petn. p. 12.) As argued previously, it is submitted that the product from Miami was properly reduced into evidence; but if, for the sake of

argument only, it was error, the error was harmless and did not contribute to the verdict beyond a reasonable doubt. *Harrington v. California*, 395 U.S. 250, 254, 23 L. Ed. 2d 284. The items seized were merely pamphlets and documents dealing with Cuban patriotism and anti-Castroism and anti-Castro organizations, which petitioner never disputed was part of his philosophy. (Opinion pp. 5-9, 11, 12.) Even petitioner admits that this evidence was merely to show petitioner's involvement in the "Cuban Power" movement. (Petn. p. 15.) In fact, petitioner had been seen, in evidence other than that gleaned in the searches, carrying boxes that had on it stickers reading, "Cuban Power." (Opinion pp. 4-5.) Petitioner also showed his zeal for the "Cuban Power" movement in conversation with Sergeant Cline. (Opinion p. 7.) The fact that the prosecutor mentioned and used this evidence at trial and the fact that the Deputy Attorney General who prepared the response in the State Appellate Court referred to this evidence, would not show it was not harmless as petitioner argues. (Petn. pp. 13-14.) Petitioner's argument would mean that anytime a prosecutor sought or used evidence found to be improper, it could never be harmless. Since the evidence related only to undisputed fact, it was harmless beyond a reasonable doubt. However, it is strongly urged that under Federal standards, the evidence from the Miami inventory and search was properly introduced into evidence.

II.

SUFFICIENCY OF THE EVIDENCE IS A QUESTION FOR THE TRIER OF FACT

Petitioner argues that absent the evidence obtained from the Miami inventory and search, the evidence is insufficient to sustain the conviction. (Petn. pp. 34, 35.) Sufficiency of the evidence is a question of fact for the jury, and it should not be reweighed by an appellate court, so that a Federal question is not involved: *Hoke v. United States*, 227 U.S. 308, 324:

However, it is submitted that the evidence is sufficient even absent the Miami evidence, though it is urged, as previously argued, that the material gleaned from Miami was properly introduced into evidence. That the evidence is sufficient is brought out by the Court of Appeal in the Opinion on pages 20 and 21:

> "The evidence that the bombings were all perpetrated by members of the 'Cuban Power' organization is strong. There is evidence that the organization was engaged in anti-Castro activities. Defendant admitted membership therein. We recognize that mere membership in a subversive group would be insufficient to sustain a conviction of a crime committed by some members thereof (*Keyishian v. Board of Regents of New York*, 385 U.S. 589 [17 L.Ed.2d 629, 642-643, 87 U.S. 675], but here we have significant additional evidence: defendant's presence in Los Angeles at about the time of the bombings; the fact that he and one Arnau picked up similar stickers at a Los Angeles printing establishment on June 28, 1968; evidence that in May or June of 1968 defendant

and codefendant Cornillot were seen taking cardboard boxes with 'Cuban Power' stickers on them into the Los Angeles apartment of a Mr. Padron, a survivor of the Bay of Pigs invasion; evidence that the bombs had been housed in cardboard boxes; evidence that codefendant's fingerprints were found on a 'Cuban Power' sticker on the wall of the Mexican National Tourist Council office immediately after the bombings, and defendant's fingerprints were found on a similar sticker on a pillar on the Air France office immediately after the bombings; in addition, there is defendant's voluntary statement to a police officer during his transportation from Miami to Los Angeles: 'What do you think I'll get? . . . We are patriots and we believe in what we are doing. . . . We are fighting on foreign soil just as you are in Vietnam.'

"There is substantial evidence (*People v. Bassett*, 69 Cal. 2d 122, 139), not only of his membership in the 'Cuban Power' organization, but of his conspiracy with other members thereof to commit criminal acts (Pen. Code, § 31; *People v. Hardeman*, 244 Cal.App.2d 1, 41), and also of his commission of the crimes of which he was convicted."

United States v. Corso, 439 F. 2d 956, 961 (4th Cir. 1971), cited by petitioner (Petn. pp. 36-37) is not in point as the evidence in that case, a Federal prosecution of a burglary of a savings and loan company, comprised the defendant's fingerprints on a moveable item found at the scene of the crime and the fact that the defendant had worked a year before in

an adjacent building. The facts in the case at bar are much stronger.

Petitioner argues that certain statements made by him to Sergeant Cline asking the officer as to what the officer thought he would get and that they were patriots believing in what they were doing and fighting on foreign soil just as "you are in Vietnam," were taken out of context in that they could be interpreted in an innocent manner. Namely he argues that it could merely reflect anti-communist feeling and fear of being convicted, "even though innocent." (Petn. p. 38.) It is submitted that inferences as to statements whether of innocence or guilt are for the trier of fact, and is not subject to attack on appeal. *See People v. Hillery*, 62 Cal. 2d 692, 702-03, 44 Cal. Rptr. 30, 401 P. 2d 382, *cert. denied*, 386 U.S. 938; *People v. Daugherty*, 40 Cal. 2d 876, 884-85; 256 P. 2d 911; *People v. Newland*, 15 Cal. 2d 678, 681, 104 P. 2d 778.

Petitioner also argues that the Court of Appeal stated in its Opinion that there was evidence that bombs of the same type were used in both Miami and Los Angeles explosions (Opinion p. 20) when no such evidence was introduced. (Petn. p. 38.) However, petitioner himself testified that Cuban Power was claiming credit along with other organizations, for bombings that were taking place in Miami. [Rep. Tr. pp. 565-576.]

It is submitted therefore that the question of sufficiency of the evidence is not a Federal question, and also that in fact, the evidence was sufficient to sustain the conviction, even without the evidence obtained from Miami.

Conclusion

For the foregoing reasons, it is respectfully requested that the petition for certiorari be denied.

Respectfully submitted,

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APPENDIX.

Opinion of the Court of Appeal

In the Court of Appeal of the State of California, Second Appellate District, Division Three.

The People, Plaintiff and Respondent, v. Juan Jorge Garcia Cardenas,* Defendant and Appellant. 2 Crim. No. 18297. (Sup. Ct. No. 236683).

Filed: July 28, 1971.

APPEAL from judgment of the Superior Court of Los Angeles County and order denying probation. Paul G. Breckenridge, Judge. Judgment affirmed; appeal from order dismissed.

Edward I. Gritz, for Defendant and Appellant.

Evelle J. Younger, Attorney General, William E. James, Assistant Attorney General, and Norman N. Flette, Deputy Attorney General, for plaintiff and Respondent. [End of Page 1]

Defendant and codefendant Cornillot were jointly indicted on fifteen felony counts in connection with bombings on July 19, 1968 of five separate buildings and offices in Los Angeles and Beverly Hills. Cornillot was not tried with defendant.[1] Counts 1, 4, 7, 10 and

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*The record on appeal alternately describes defendant as Garcia, Cardenas and Garcia-Cardenas. The indictment was amended June 18, 1969 to show defendant's true name as Juan Jorge Garcia Cardenas.

[1]The clerk's transcript prepared in conjunction with Cardenas' appeal does not contain copies of all the counts of which he was found guilty; some of the counts were amended and do not correspond to the counts as stated in the judgment. We have augmented the record to include the Superior Court file (Cal. Rules of Court, rule 12a) and find that the indictment set forth in defendant's record on appeal in fact applies to Cornillot.

(This footnote is continued on next page)

13 charged defendant with unlawfully discharging explosives (Pen. Code, § 375(4)); counts 2, 5, 8; 11 and 14 with possession of destructive devices (Pen. Code, § 12303); and counts 3, 6, 9, 12 and 15 with malicious use of explosives (Health & Saf. Code, § 12354). Defendant pleaded not guilty. Motions under sections 995 and 1538.5, Penal Code, and a motion to suppress Exhibits 80, 81 and 82 were denied.

After jury trial defendant was found guilty on all counts; his motion for new trial and application for probation were denied. The court, on its own motion arrested judgment on the counts of malicious use of explosives (counts 3, 6, 9, [End of Page 2] 12 and 15), and defendant was "discharged from further disabilities on those counts." He was sentenced to state prison for the term prescribed by law on the five bombing and the five possession counts, the sentence on the bombing of the Shell Data Processing Center (count 4) to run consecutively to the sentence on the bombing of the Mexican National Tourist Council (count 1), and the sentences on the other three bombing counts (counts 7, 10 and 13) to run concurrently with that on count 1; execution of sentences was stayed on the possession counts (counts 2, 5, 8, 11 and 14) until the judgment becomes final on the bombing counts, at which time the stay was to become permanent. Defendant appeals from the judgment of conviction and the order denying probation; the appeal from the order will be dismissed. (Pen. Code, § 1237; *People v. Jackson*, 230 Cal.App.2d 485, 489.)

We perceive no purpose in having the clerk's transcript corrected since the reporter's transcript at pages 17 through 32 states the full text of all the courts charged against Cardenas and of which he was found guilty; the judgment conforms thereto.

Facts

On April 5, 1968 defendant and codefendant Cornillot were arrested in Miami, Florida, for disturbing the peace. Defendant's car was driven to the police station, impounded, searched, and the contents thereof inventoried. The charges against the two men were subsequently dismissed. Defendant's automobile was returned to him. At the time he was unaware that the police had retained possession of some of the contents of his car. [End of Page 3]

Shortly after midnight on July 19, 1968, five buildings in Los Angeles and Beverly Hills were bombed: the Mexican National Tourist Council (count 1) in Beverly Hills; the Shell Data Processing Center (count 2), approximately 50 yards distant from the tourist agency; the Air France office (count 7) in downtown Los Angeles; the Japan Air Lines office (count 10) approximately a block and a half west of Air France; and the Government of Mexico Tourist Department (count 13), midway between Los Angeles and Beverly Hills. Stickers with the words "Unete Poder Cubano" (United Cuban Power) were found at the bombed buildings: at the Mexican Tourist Council (Exhibit 66), at the Air France office (Exhibit 64 and Exhibit 67), and at the Shell Center (Exhibit 65).

It was stipulated at trial "that the stickers . . . marked . . . 64, 65, 66 and 67 were ordered from [Colby Poster Printing Company in Los Angeles] on May 25, 1968 by Pedro . . . Arnau . . . .; that the stickers were ordered in the quantity of 1,000, and that the stickers were picked up on June 26, 1968, by Pedro Arnau and Juan Garcia-Cardenas, the defendant. . . ."

A Mrs. Bustamente testified that prior to June or July 1968 she had observed defendant and codefendant [End of Page 4] Cornillot on numerous occasions carrying cardboard boxes into one Adolfo Padron's apartment and saw stickers on the boxes reading "Cuban Power."

A fingerprint expert testified that he found Cornillot's fingerprints on a sticker at the Mexican National Tourist Council office (Exhibit 66), and defendant's fingerprints on a sticker at the Air France office (Exhibit 67).

A criminologist assigned to the Scientific Investigation Division, Los Angeles Police Department, investigated the various bombed locations. He testified that analysis of the debris found at each location indicated that homemade bombs from a common source had been used; that he found fragmentary evidence of red, white and blue material with foreign language thereon which had been placed and wrapped with a type of masking tape; that the bombs had been constructed with flat powder fuses containing red thread; that the main charge had been dynamite; and that the bombs had been placed in mail boxes or positioned near doors.

On October 28, 1968, upon receipt of information via radio that a fugitive warrant had been issued in Los Angeles for the arrest of defendant, FBI agents arrested defendant in Miami. Without his consent they searched his apartment and found red, white and blue stickers with the words "Poder [End of Page 5] Cubano" and the printed name "Jose Marti" (Exhibit 85).

a three-page handwritten[2] document entitled "Poder Cubano Unido, Celula, Espontanea #1 GTC" (Exhibit 86[2]), two receipts for donations (Exhibit 87), a three page typed document entitled "Poder Cubano Tribuno Del Partido Revolucionario de Cubano" (Exhibit 88), a document entitled "Boletin de Guerre" (War Bulletin) (Exhibit 89[3]), and a document entitled "Poder Cubano Celula #1, Gerardo Torres Contreras" (Exhibit 90[4]).

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[2]Exhibit 86 reads in pertinent part as follows:

"United Cuban Power.
"Spontaneous Cell #1 G.T.C.

. . .

"Through this medium we inform the exiles in general, that all secret spontaneous cells that operate in different cities of the U.S. close ranks . . . not to criticize any medium used in the battle for the prompt overthrow of the existing regime in Cuba.

". . . The only thing that will carry us to victory will be the Cuban revolution. . . .

"For the liberty of Cuba we call the Cubans to incorporate in the battle—this is the time where we have to maintain high our combat flag at whatever price that may be necessary. . . .

"Every Cuban has the duty of trying by all means within his reach to cooperate in the liberation of our country.

. . .

"And that's why we say that we will maintain our position in any place where we may be, attacking the enemies of our country that trade with the blood and sorrow of our Cuba. . . .

"If we want to criticize or judge, we should first fight to free our country. . . ."

[3]Exhibit 89 reads in part:

"We are responsible of the revolutionary punishment against the French offices, and we ask the French Government to break its treacherous commerce with the Castro communism."

[4]Exhibit 90 reads in part:

"Cuban Power.
"Cell #1. Gerardo Torres Contreras:

. . .

(This footnote is continued on next page)

On December 21, 1968 Sergeant Cline of the Los Angeles Police Department, who had gone to Miami to transport defendant to Los Angeles, advised him of his constitutional rights. Within two hours thereafter, defendant and the officer engaged [End of page 6] in a short conversation while airborne en route to Los Angeles. The officer asked defendant if he was aware that a Dr. Bosch had received five to ten years for terroristic activities; defendant replied: "Yes. What do you think I'll get?" Defendant added: "We are patriots and we believe in what we are doing. . . . We are fighting on a foreign soil just as you are in Vietnam.".

Defendant testified that he was 31 years old, and he had been born in Cuba, and spoke and understood some English; that at the time of the bombings he was a member of a movement known as "Poder Cubano" (Cuban Power), and assisted in the propagation of its principles by distributing pamphlets, [End of page 7] literature and stickers; that he lived in Miami, where he operated a restaurant, and on occasions had gone to Los Angeles to visit relatives and to assist Los Angeles members of the Cuban movement; that he had assisted Pedro Arnau in picking up stickers at a Los Angeles printing plant; that he did not carry any boxes into Mr. Padron's apartment; that he had not met co-defendant Cornillot in Los Angeles by prearrangement, but had seen him several times on the street during June 1968; that he was aware that Arnau and

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"Third: Encourage the militancy of those exiled for their participation of every type of struggle. . . .

. . .

"Ninth: Encourage actions in the world of the Cuban revolutionaries, to blockage commerce with tyranny. . . .

"Miami, September 24, 1968.

"Dr. Orlando Bosch, Political Delegate Cuban Power."

Padron were survivors of the Bay of Pigs incident and were members of "Poder Cubano"; that he believed that the only way to [End of page 8] overthrow Castro was by the use of revolutionary means; that the inherent plan of "Poder Cubano" to accomplish this result was to prevent foreign countries from trading with Cuba, thus bringing about Cuba's economic destruction, that he had written the full text of Exhibit 86 (see fn. 2, *ante*); that he was in Miami on the day of the bombings, having returned from Los Angeles by automobile during the latter part of June or early July 1968; and he was not aware until his trial in Los Angeles that the Miami police had secretly retained articles taken from his car on the occasion of his April 1968 arrest on the charge of disturbing the peace.

Contentions

Defendant contends that each of his arrests in Miami was unlawful and that the searches and seizures incidental thereto were illegal; that his statements to the Los Angeles police officer were obtained in violation of *Miranda v. Arizona,* 384 U.S. 436 [16 L. Ed.2d 694; 86 S.Ct. 1602]; that the federal fugitive warrant was obtained improperly by federal agents, was a mere subterfuge to deprive him of extradition rights and to subject his apartment to an exploratory search; that the trial judge erred prejudicially in giving instructions on conspiracy; and that the evidence was insufficient to sustain the judgment of his conviction. [End of page 9]

First Miami Arrest

Defendant contends the Miami police had no probable cause to arrest him on April 5, 1968 for disturbing the peace; that the search of his car which uncovered Exhibits 80, 81 and 82 was illegal and that the exhibits were improperly admitted into evidence at his trial in Los Angeles. He also suggests that lack of probable cause is amply demonstrated by the fact that the charge for which he was arrested was subsequently dismissed.

The facts surrounding that arrest are summarized; while eating at a drive-in, Officer Chacon of the Miami Police Department informed Officer Estafan that defendant and Cornillot were taking pictures of their police cars from across the street; after eating, Estafan continued on routine patrol in his car, while Chacon remained; sometime later Chacon radioed that he was stopping defendant's car and requested backup assistance from Estafan; on arrival at the scene Estafan heard Cornillot and defendant speaking loudly to Chacon; as he walked by defendant's car he observed a camera and a tape recorder in the car; Cornillot grabbed the officer and attempted to get between him and the car, apparently to prevent the officer from looking inside; Cornillot yelled at the officer that he had no right to search or look into the [End of page 10] auto; Cornillot was placed under arrest for disturbing the peace (Fla. Stats. Ann., § 877.03) and for drunkenness (Fla. Stats. Ann., § 856.01; defendant began to take Estafan's picture, yelling that he had his rights and that he was a "Cuban Power"; defendant was then arrested for disturbing the peace.

An arrest by a police officer without a warrant is justified in Florida when the offense is committed in

the presence of the officer. (Fla. Stats. Ann., § 901.15.) In view of the conduct of defendant and his companion, we hold that the arrests were based on probable cause. (*People v. Ingle*, 53 Cal.2d 407, 412-413.) The fact that the charges against defendant were subsequently dismissed has no bearing on the legality of his arrest. (*Coverstone v. Davies*, 38 Cal.2d 315, 319; *Fraher v. Superior Court*, 272 Cal. App.2d 155, 161; *Smith v. State* (Fla.) 155 So.2d 826.)

Officer Estafan of the Miami Police Department testified that when an arrest is made of the sole occupant of a car in Florida, "the car becomes the responsibility of our department. . . . I'm responsible for the valuables of the car and of the car. . . . I make out a pound [*sic*] slip and inventory . . . all the items of value in the car." This was a procedure apparently authorized by statute. (See Fla. Stats. Ann., § 186.59.) At the scene the officer made [End of page 11] a cursory examination of the car; he observed a gun and shells in the glove compartment and bundles of printed material in the truck. On instructions from the Intelligence Unit of the Miami Police Department, the car was then taken to police headquarters where a formal impound and inventory were made. A search of the trunk uncovered 60 packages, each containing 1,000 pamphlets entitled "Declaration of Principles of Cuban Power, Cell No. 1, Gerrardo Torres Contreras," approximately 75 red, white and blue placards depicting a person designated as Jose Marti, and 75 red, white and blue bumper stickers with a picture of Jose Marti and the words "Poder Cubano." Specimens of each of the above were retained by the police when they returned the auto and its contents to defendant;

the specimens were introduced into evidence, being designated as Exhibits 80, 81 and 82, respectively.

Defendant contends that the impound was a pretext for an illegal search and that the fruits thereof, Exhibits 80, 81 and 82, were inadmissible. The People argue that an inventory search of an impounded auto was legal as of the date of the instant search (April 1968), and that the subsequent decision restricting such searches (*Mozzetti v. Superior Court*, 4 Cal.3d 699) should not be applied retroactively.

We have no hesitancy in holding that *Mozzetti* is applicable to this case. *Mozzetti* restates a principle first [End of Page 12] enunciated in 1964, the Supreme Court stating on page 711: "In *People v. Burke* (1964) *supra*, 61 Cal. 2d 575, the police had lawful custody of the automobile of a suspect arrested on suspicion of burglary. Nevertheless, this court invalidated a search of the vehicle at the police storage lot. We explicitly rejected the People's contention that the authority to remove and store the vehicle under Vehicle Code sections 22651, subdivision (h), and 22850 encompassed authority to search: 'The officers were authorized by these sections to remove defendant's car from the highway and impound it but the sections do not purport to authorize the making of a search.' (*Id.* at p. 580.)"

We hold that the product of the search of defendant's auto was inadmissible under California law. Although questions of admissibility of evidence are decided by the law of the forum (11 Cal.Jur.2d, Conflict of Laws, § 97, p. 201; Rest., Conflict of Laws, § 597), we note that as of the date of the search, evidence obtained under such circumstances was also inadmissi-

ble in Florida. (*Miller v. State* (Fla.) 137 So.2d 21, 26.) Exhibits 80, 81 and 82 were improperly admitted into evidence. In view of this conclusion we find it unnecessary to discuss other contentions raised by defendant with respect to the admissibility of these three exhibits, namely: that the search was remote from the [End of Page 13] place of arrest; that the search was at a different location than the usual place for making an inventory; and that the nonconsensual retention by the Miami police of the three specimens made the exhibits inadmissible.

Second Miami Arrest

Defendant contends that his arrest on October 28, 1968 by FBI agents was based on an improperly issued federal warrant; alternately, that if his arrest was proper, the search exceeded the scope of the crime for which he was arrested and was likewise illegal; and that the federal action was an unwarranted interference with state extradition proceedings and a pretext for an exploratory search.

We first consider the legality of defendant's arrest. It appears that the FBI and the local authorities had conducted a joint investigation of the case. The facts developed caused each agency to consider defendant and Cornillot as prime suspects. In October, approximately three months after the bombings, Special Agent McCarthy, in charge of the case for the FBI, learned that the two men were in Florida and was aware of the intention of the FBI to obtain unlawful flight complaints against each. At about the same time Sergeant Cline, Los Angeles Police Department, secured from the district attorney's office a complaint against each

man and warrants for their arrest. On October 28 Special [End of Page 14] Agent Karis, FBI, pursuant to instructions from his supervisor, signed a federal complaint against each man, stating in his affidavit that he had been "informed through official channels by the Los Angeles Police Department that felony complaints against the above two suspects are outstanding in Los Angeles County" for the July 19, 1968 offenses; that "on or about July 20, 1968" each man "did move and travel in interstate commerce . . . with intent to avoid prosecution . . ." (18 U.S.C.A., § 1073); and that he had been "informed through official channels by FBI Miami that FBI agents have observed the subjects in Miami within the last several days." Federal warrants were issued and served on defendant and Cornillot on October 28.

Relying on *Giordenello v. United States*, 357 U.S. 480 [2 L.Ed.2d 1503, 78 S.Ct. 1245].) defendant contends that the affidavit to the federal complaint was deficient in that it failed to set forth essential facts constituting the offense charged and in that it failed to show probable cause to believe that the offense had been committed and that defendant had committed it; and that as a result his arrest was illegal.

The affidavit in *Giordenello* set forth no facts, but only the conclusion that on a particular day the defendant possessed narcotics in violation of a federal law. In holding that it was defective and that the resultant arrest was illegal, the Supreme Court said: "The Complaint contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein; it does [End of Page 15] not indicate any sources for the complainant's belief; and it does not set forth any other sufficient basis upon which

a finding of probable cause could be made." (357 U.S. at p. 486 [2 L.Ed.2d at pp. 1509-1510].)

Giordenello is readily distinguishable. Here we have an affidavit setting forth facts and the source thereof. (See *Bowers v. Coiner* (S.D. W.Va. 1970) 309 F. Supp. 1964.) The affidavit was sufficient and the arrest was legal.

We next consider the legality of the search of defendant's apartment and seizure of evidence. The search occurred prior to *Chimel v. California,* 395 U.S. 752 [23 L.Ed.2d 685, 697, 89 S.Ct. 2034], and its legality is determined by pre-*Chimel* standards. (*People v. Edwards,* 71 Cal.2d 1096, 1107.) It has been repeatedly stated that where an arrest is lawful, a reasonable search incidental thereto is valid. (*Ker v. California,* 374 U.S. 23 [10 L.Ed.2d 726, 742-744, 83 S.Ct. 1623]; *People v. Cockrell,* 63 Cal.2d 659, 667.) In order to be incident to an arrest the search must be limited to the premises where the arrest is made, have a definite object and be reasonable in scope. (*Cockrell, supra,* 63 Cal.2d at p. 667.) The scope of a search is unreasonable when the purpose of it is to uncover evidence unrelated to the crime for which the arrest is made; and evidence recovered as a result thereof is inadmissible. (*People v. Schaumloffel,* 53 Cal.2d 96.) Thus it was [End of Page 16.] held in *People v. Baca,* 254 Cal.App.2d 428, that contraband found during a search of defendant's home following her arrest on a bench warrant was inadmissible, the court pointing out on page 431 that defendant was arrested as a fugitive, that once the police had discovered her, their purpose had been fulfilled and that "[t]here was no need to search further once the object of the search had been found."

The principles of *Baca, supra,* apply here. Defendant was not arrested on the state charges or under the state warrant; the arrest was made on the federal warrant issued in connection with the federal charge of flight to avoid prosecution. The search and seizure was illegal; Exhibits 85-91 (fns. 2, 3, 4, *ante*) were improperly received in evidence.

It appears that at the time of defendant's arrest he was warned of his *Miranda* rights by an FBI agent. During the search of his apartment one of the agents asked defendant if the handwritten document, Exhibit 86 (fn. 2, *ante*), was in his handwriting; defendant acknowledged that it was.

At trial defendant was asked on cross-examination about Exhibit 89 (fn. 3, *ante*). He admitted that he wrote it in September or October 1968.

Since we have held that Exhibits 86 and 89 were the product of an illegal search and seizure, and were improperly [End of Page 17] received in evidence, it necessarily follows that his statement with respect to Exhibit 86 and his testimony with respect to Exhibit 89 were not admissible.

Statement to
Los Angeles Police Officer

Defendant contends that the following statement admitted into evidence violated rights guaranteed by *Miranda:* "We are all patriots and we believe in what we are doing. We are fighting on a foreign soil just as you are in Vietnam."

There is no merit to this contention. It was made by defendant to Sergeant Cline of the Los Angeles Police Department, during travel to Los Angeles, after de-

fendant had been adequately warned of his *Miranda* rights. Furthermore, the record clearly shows and defendant admitted that at the time of the statement, Cline was not conducting any interrogation of him, but that the statement was made voluntarily during "idle conversation."

Instructions on Conspiracy

Defendant contends that since he was not charged with conspiracy, the trial court erred in instructing the jury on conspiracy.

We do not agree. As stated in *People v. Washington*, 71 Cal.2d 1170, 1174: "When there is evidence of a conspiracy to commit the substantive offenses charged, it is not error [End of Page 18] to instruct the jury on the law of conspiracy even though no conspiracy is charged. [Citations.]" (Cf. *People v. Fain*, 18 Cal. App.3d 137, 143.) Here there was substantial evidence of a conspiracy, and the prosecution used it to prove the guilt of the substantive offenses.

Sufficiency of the Evidence

Disregarding Exhibits 80-82 and 85-91, obtained in the two Miami searches, and defendant's admission that Exhibits 86 and 89 were in his handwriting, all of which evidence we have held to have been inadmissible, we review the remaining evidence to determine its sufficiency to sustain the verdict. In doing so we are governed by principles set forth in *People v. Redmond*, 71 Cal.2d 745, 755: "This court must review the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Sweeney*, 55 Cal.2d 27, 33 [9 Cal.

Rptr. 793, 357 P.2d 1049].) If the circumstances reasonably justify the trial court's findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. (*People v. Robillard*, 55 Cal.2d 88, 93 [10 Cal.Rptr. 167, 358 P.2d 295, 83 A.L.R.2d 1086]; *People v. Love*, 53 Cal.2d 843, 850-851 [3 Cal.Rptr. 665, 350 P. 2d 705].) The test on appeal is [End of Page 19] whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. (*People v. Hillery*, 62 Cal.2d 692, 702-703 [44 Cal.Rptr. 30, 401 P.2d 382].) Before the judgment of the trial court can be set aside for insufficiency of the evidence to support the verdict of the jury, it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it."

Here we find bombs of the same type used in Miami and in Los Angeles explosions, "Cuban Power" wrappers on the bombs and "Cuban Power" stickers found at several of the bomb sites. The evidence that the bombings were all perpetrated by members of the "Cuban Power" organization is strong. There is evidence that the organization was engaged in anti-Castro activities. Defendant admitted membership therein. We recognize that mere membership in a subversive group would be insufficient to sustain a conviction of a crime committed by some members thereof (*Keyishian v. Board of Regents of New York*, 385 U.S. 589 [17 L.Ed.2d 629, 642-643, 87 U.S. 675], but here we

have significant additional evidence: defendant's presence in Los Angeles at about the time of the bombings; the fact that he and one Arnau picked up similar stickers at a Los Angeles printing establishment on June 28, 1968; evidence that in May or June of 1968 defendant and codefendant Cornillot were seen taking cardboard boxes with "Cuban Power" [End of Page 20] stickers on them into the Los Angeles apartment of a Mr. Padron, a survivor of the Bay of Pigs invasion; evidence that the bombs had been housed in cardboard boxes; evidence that codefendant's fingerprints were found on a "Cuban Power" sticker on the wall of the Mexican National Tourist Council office immediately after the bombings, and defendant's fingerprints were found on a similar sticker on a pillar at the Air France office immediately after the bombings; in addition, there is defendant's voluntary statement to a police officer during his transportation from Miami to Los Angeles: "What do you think I'll get? . . . We are patriots and we believe in what we are doing. . . . We are fighting on foreign soil just as you are in Vietnam."

There is substantial evidence (*People v. Bassett*, 69 Cal.2d 122, 139), not only of his membership in the "Cuban Power" organization, but of his conspiracy with other members thereof to commit criminal acts (Pen. Code, § 31; *People v. Hardeman*, 244 Cal.App.2d 1, 41), and also of his commission of the crimes of which he was convicted.

The evidence of guilt is so strong that we unhesitantly conclude beyond a reasonable doubt that the

errors in the admission of evidence did not contribute to the verdict obtained (*Chapman v. California,* 386 U.S. 18, 24 [17 L.Ed.2d 705, 710, 87 S.Ct. 824]), and that it is not reasonably [End of Page 21] probable that a result more favorable to the defendant would have been reached in the absence of the errors. (*People v. Watson,* 46 Cal.2d 818, 836.) The errors were not prejudicial; they did not result in a miscarriage of justice; they did not deprive defendant of a fair trial. (Cal. Const., art. VI, § 13.)

Judgment affirmed; appeal from order denying probation dismissed.

CERTIFIED FOR NONPUBLICATION.

Schweitzer, *J.*

We concur:

Ford, *P. J.*

Allport, *J.* [End of Page 22]